



Raad van Arbitrage voor de Bouw

Arbitration board for the building industry

Arbitration rules

15 February 2016

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3 Definitions/Object

In these Rules, the terms below have the following meaning:

The Arbitration Board:

Stichting Raad van Arbitrage voor de Bouw (RvA).

Chairman:

the chairman of the Arbitration Board or, in his absence or in the event of incompatibility of positions, the vice-chairman of the Arbitration Board.

Council of Arbitrators:

the arbitrators as appointed and in office in accordance with Article 13 of the Articles of Association of the Arbitration Board.

arbitration:

the conduct of litigation as referred to in the fourth book of the Dutch Code of Civil Procedure.

Arbitral Tribunal:

an arbitral tribunal comprising one, three or five arbitrator(s), composed in accordance with Article 3 of these Rules.

Secretariat:

the office of the Arbitration Board.

Article 1

These Rules, determined in accordance with the Articles of Association of the Arbitration Board, provide for the method of handling disputes that are submitted to the Arbitration Board or its Council of Arbitrators.

Article 2

Object

The objects of the Council of Arbitrators are:

to resolve disputes in the building industry, which also includes:

- a. to provide preliminary relief;
- b. to examine and determine the quality and/or the condition of the work area, the work itself, any part thereof or any auxiliary work in accordance with the provisions in Article 1020(4)(a) of the Dutch Code of Civil Procedure;
- c. to determine the amount of compensation or monetary amount owed, as referred to in Article 1020(4)(b) of the Dutch Code of Civil Procedure;
- d. to supplement or amend the legal relationship as referred to in Article 1020(1) in conjunction with (4)(c) of the Dutch Code of Civil Procedure;

Object/The Arbitral Tribunal

- e. the proceedings for assessing damages as referred to in Article 612 of the Dutch Code of Civil Procedure.

The Council of Arbitrators shall not be required to resolve disputes beyond the applicability of these Rules, unless a certificate of no objection has been issued by the Chairman for the relevant arrangement - in the context of which the dispute has arisen - and for the arbitration rules contained in or accompanying the same. The Chairman shall only proceed to do so after adoption of a board resolution.

Article 3

The Arbitral Tribunal

- 1 The Arbitral Tribunal shall be composed from the Council of Arbitrators and appointed by the Chairman.
- 2 No later than with the filing of the statement of defence, the parties may provide the Chairman, in writing, with the name/names of the arbitrator(s) for whom they have established, based on mutual consultation, a common preference for appointment; when appointing the arbitrator(s), the Chairman shall take the common preference expressed by the parties into account as much as possible.
- 3 If the parties have so agreed, within the period referred to in paragraph 2 of this article each party is authorised to require one of the three arbitrators to be appointed to lawyer-members of the Council of Arbitrators.
- 4 In cases other than those referred to in paragraph 3 of this article, the Chairman is authorised to appoint one of the arbitrators from the lawyer-members of the Council of Arbitrators if he deems this desirable based on the nature of the dispute.
- 5 In the cases referred to in paragraphs 3 and 4 of this article, the Arbitral Tribunal shall always be comprised of three members, unless the parties have agreed to adjudication of the dispute by one lawyer-member. If, however, a party exercises its authority as referred to in Article 14(4) of these Rules, the Arbitral Tribunal shall always be comprised of three members.
- 6 To the extent possible, the Arbitral Tribunal shall be appointed by the Chairman no later than two months after the statement of defence has been filed or the final period of time fixed for that purpose has elapsed without being used.
- 7 Once appointed, the Arbitral Tribunal shall elect the seat of the Arbitration Board as the place of arbitration referred to in Article 1037 of the Dutch Civil Code of Procedure.
- 8 If the claim is for payment of a sum of money in the amount of EUR 100,000 or less, the Arbitral Tribunal shall be comprised of one arbitrator, unless

5 The Arbitral Tribunal

- a. the Chairman decides that the nature of the dispute renders adjudication by three arbitrators desirable;
 - b. both parties desire/have agreed adjudication by three arbitrators.
If the nature of the dispute gives cause for such, the Chairman may also appoint one of the lawyer-members as the sole arbitrator.
- 9 If the claim is solely for payment of a sum of money in a principal amount of more than EUR 100,000.00, the Arbitral Tribunal shall be comprised of three arbitrators, unless
- a. the Chairman decides that the simple nature of the dispute renders adjudication by one arbitrator desirable;
 - b. both parties desire/have agreed adjudication by one arbitrator.
- 10 The amount referred to in paragraphs 8 and 9 of this article may be adjusted by the board of directors of the Arbitration Board in line with the indexation of building costs, published by the Bureau Documentatie Bouwwezen (Dutch Documentation Bureau for Building).
- 11 If the claim, in full or part, is for something other than monetary payment, the Chairman shall decide whether the Arbitral Tribunal will be comprised of one or three arbitrators, unless the parties express a common preference in this regard.
- 12 The Chairman may only be appointed as arbitrator in an Arbitral Tribunal comprised of at least three arbitrators. If and as soon as the Chairman acts as arbitrator, the vice-chairman shall act in his place in so far as any action is required of the Chairman with regard to the dispute.
- 13 If the assignment to one or more of the appointed arbitrators ends before the Arbitral Tribunal has completed its task, the Chairman is authorised to make a new appointment without prior written notice to the parties.
- 14 In these Rules, unless the text indicates otherwise, the words 'arbitrator(s)', 'Arbitral Tribunal', etc. are used not only with regard to the legal arbitration but also with regard to the binding advice, thus meaning 'binding advisor(s)', 'advisory committee', etc.
- 1 The members of the Council of Arbitrators who are appointed as arbitrators shall notify the Chairman as soon as possible after receiving their appointment whether they accept their appointment or whether they are unable to accept their appointment, stating the reason(s).
 - 2 The validity of the reason(s) for being unable to accept the appointment shall be determined by the Chairman.

6 The Arbitral Tribunal

3 The arbitrator who accepts his appointment shall so notify the Secretariat in writing as soon as possible; as soon as all members of the Arbitral Tribunal have accepted their appointment, the Secretariat shall so notify the parties in writing as soon as possible.

Article 5

- 1 Members to whom a case is assigned for an arbitral decision or binding advice shall be relieved of their assignment by termination of their membership, unless the termination of membership is a result of the expiry of the calendar year in which the relevant member has reached the age of 70, or of resignation by the member from his membership.
- 2 Members to whom a case is assigned for an arbitral decision or binding advice shall be relieved of their assignment by suspension of their membership by the Chairman due to serious non-performance.

Article 6

- 1 An arbitrator may be relieved of his duties at the joint request of the parties. If an arbitrator is no longer able to perform his assignment de jure or de facto, he may be relieved of his assignment at the request of any party. At the request of the most diligent party, the assignment to the Arbitral Tribunal may be terminated if there are valid reasons for doing so, including the reason referred to in Article 1029(5) of the Dutch Code of Civil Procedure. The Chairman of the Arbitration Board shall decide on such requests. Should the request be granted, the relevant arbitrator or the Arbitral Tribunal, as the case may be, shall be replaced in accordance with the provisions in Article 3(13) of these Rules.
- 2 If a member of the Council of Arbitrators is exempted from accepting his appointment as arbitrator for valid reasons, as well in the event of the death of an arbitrator or any impediment barring him from continuing to carry out his assignment as arbitrator, including the situations referred to in Article 5, the new appointment shall be made as provided in Article 3(13) of these Rules.
- 3 In so far as the appointment of the Arbitral Tribunal ends as a result of the filing of the final award with the court registry as referred to in Article 12(4), such appointment shall revive in the event referred to in Article 1056(2) of the Dutch Code of Civil Procedure.

Article 7

A lawyer listed in a file maintained by the Arbitration Board as referred to in Article 15 of the Articles of Association of the Arbitration Board shall be added to the Arbitral Tribunal ex officio as secretary. The secretary shall have an advisory vote in that respect.

7 Conduct of proceedings

Article 8

- 1 Arbitration must be commenced by a written request for arbitration, submitted to the Arbitration Board by either one or both of the parties, in which the dispute is properly described and explained. The request for arbitration may be submitted by means of written telecommunication or electronically as referred to in Article 1072(b) of the Dutch Code of Civil Procedure.
- 2 The date on which arbitration is commenced shall be the date on which the request for arbitration referred to in paragraph 1 of this article has been received by the Secretariat for the attention of the Chairman.
 - 2a If the arbitration is commenced against a natural person who is not acting in the conduct of a business or profession as referred to in Article 6:236 of the Dutch Civil Code, that party may, by registered letter, be allowed a period of one month to comment on whether he accepts dispute resolution by means of arbitration, unless the party requesting arbitration had already, by registered letter, given the other party at least one month to comment on the matter. Where resolution of the dispute by means of arbitration has been accepted, the date on which arbitration is commenced shall be the date referred to in paragraph 2 of this article.
- 3 If a party is represented in the proceedings before the Arbitration Board by an authorised agent who is not an attorney, that agent must submit a written power of attorney to conduct litigation in accordance with the provisions of Article 1038(1) of the Dutch Code of Civil Procedure.
- 4 Pending the proceedings, each claimant is authorised to amend, increase or reduce the claim. An amendment or increase of claim may only be permitted by the Arbitral Tribunal if the respondent has had the opportunity to comment on it in writing or verbally and if the Arbitral Tribunal does not deem the amendment or increase of claim unreasonable in respect of that party.
- 5 The proceedings shall be conducted in the Dutch language unless the parties have explicitly agreed otherwise and the Arbitral Tribunal has consented.

Article 9

If the intervention of the Arbitration Board is requested, the Chairman shall invite the party or parties requesting arbitration to deposit a sum of money to secure payment of the costs of the arbitral decision, the amount of which sum shall be determined by the Chairman for each case separately.

Article 10

- 1 The dispute shall be set out in writing. Each of the parties is authorised to submit a statement to the Arbitral Tribunal.
- 2 The Arbitral Tribunal may allow the submission of a second statement, both in the main action and in any counterclaim action.

Conduct of proceedings

- 3 If the respondent wishes to commence a counterclaim action, that action may be commenced by including a counterclaim no later than in the statement of defence, and the Arbitral Tribunal appointed to the original case may also handle the counterclaim. In that event, the respondent, too, shall be deemed a 'party requesting arbitration' and the Chairman shall be authorised to require that a deposit as referred to in Article 9 of these Rules be made. The "same arbitration agreement" referred to in Article 1038(c)(1) of the Dutch Code of Civil Procedure is concerned if the claim is based on an arbitration agreement that refers to the Arbitration Board.
- 4 The manner in which and periods of time within which the statements must be submitted shall be determined by the Arbitral Tribunal; in the event that the Arbitral Tribunal has not yet been or is no longer constituted, the Chairman shall decide on the submission of statements. The Arbitration Board has Rules of Procedure for this purpose that are published on the Arbitration Board's website.
- 5 In the event that the deposit or a supplement to the deposit required by the Arbitral Tribunal has not been made by the date set for doing so, the Arbitral Tribunal is authorised to suspend the arbitration, without prejudice to the provisions in Article 11 of these Rules; in the event that the Arbitral Tribunal has not been or is no longer constituted, the Chairman shall have that authority.
- 6 If the parties have agreed, in accordance with the provisions in Article 1038(b) of the Dutch Code of Civil Procedure, that the dispute will not be handled at an oral hearing and one of the parties requests an oral hearing nevertheless, the Arbitral Tribunal, having heard the other party, may decide to conduct an oral hearing as yet.
- 7 The Arbitral Tribunal may hear an expert appointed in accordance with Article 1042 of the Dutch Code of Civil Procedure examine a witness at a hearing of its own motion.
- 8 The Arbitral Tribunal is authorised to do all things it deems conducive to the proper adjudication of the dispute.
 - 1 If, in the opinion of the Arbitral Tribunal, either party or both parties fail to submit their statements and/or other documents in good time or, in general, delay the handling unnecessarily in the opinion of the Arbitral Tribunal, the Arbitral Tribunal may declare that litigation will be continued without waiting for the lacking statements and/or documents or acts to be performed, and then make its award.
 - 2 The provisions in this article do not affect the Arbitral Tribunal's authority to make its award or, with the Chairman's approval, to declare the instance to have lapsed if, despite repeated warnings, a claimant causes the delay referred to in paragraph 1 or remains in default of making or supplementing the deposit. Such declaration is subject to Article 13 of these Rules.

Conduct of proceedings/Ruling

- 3 If no Arbitral Tribunal is in office or if, for any reason, a previously appointed Arbitral Tribunal is no longer in office, the aforementioned authority is vested in the Chairman.

Ruling

Article 12

- 1 The Arbitral Tribunal decides in accordance with the rules of law, unless the parties have agreed otherwise, and by a majority of votes.
- 2 In derogation of the first paragraph, the Arbitral Tribunal shall decide in accordance with in disputes regarding the contracting of work, deliveries and services, which fall within the scope of rules that provide for the implementation of the current Directive of the Council of the European Union on the coordination of procedures for the award of public works, supply and service contracts.
- 3 With the exception of the provisions in paragraph 5 of this article, the decision shall be rendered in the form of an arbitral award.
- 4 The Arbitration Board shall file every award with the court registry of the district court in whose district the place of arbitration referred to in Article 3(7) is situated. The parties shall be informed of the date and number of this filing in accordance with the statement from the aforementioned court registry.
- 5 If the parties have agreed to adjudication by way of binding advice, the Arbitral Tribunal shall render a decision in the form of binding advice.
- 6 The Arbitration Board is authorised to make the decision public.

Article 13

- 1 When rendering the decision on the dispute, the Arbitral Tribunal shall also determine the amount of the costs of the dispute and which of the parties must those costs in full or in part. The Arbitral Tribunal is authorised to include such contribution to the costs of assistance in the proceedings of one party by the other party as the Arbitral Tribunal deems fair.
- 2 When determining the costs, the Arbitral Tribunal is not bound by the amount of the deposit referred to in Article 9 of these Rules.
- 3 The Arbitral Tribunal is authorised to deduct the amount of the fees payable to the arbitrators and further costs incurred by the Arbitral Tribunal from the deposit. If the deposit does not suffice for that purpose, the Arbitral Tribunal may request additional payment; the Arbitral Tribunal is not required to render its decision before such additional payment has been made.

Ruling/Fast-track disputes

- 4 If, despite repeated demands, one or both parties should fail to pay the costs referred to in this article, the Arbitration Board is authorised to claim the amount due in court.
- 5 The costs related to a request for inspection and determination of the quality and/or condition of the work area, the work, auxiliary work or any part thereof shall be paid by the party or parties requesting such inspection and determination; compensation of these costs may be claimed in connection with a dispute involving inspection and determination.

Fast-track disputes

Article 14

- 1 The following may be deemed to be fast-track disputes:
 - a. requests for preliminary relief within the meaning of Article 1043(b)(1) and (2) of the Dutch Code of Civil Procedure;
 - b. requests for inspection and determination of the quality and/or condition of a work area, work, auxiliary work, or any part thereof;
 - c. disputes on the merits and preliminary disputes regarding the contracting of works;
 - d. disputes on the merits regarding other subjects that, in the opinion of the Chairman, qualify as such;

including any claims for (additional) payment and/or compensation relating to the cases referred to above in (c) and (d) of this article.
- 2 Articles 3 to 13, inclusive, of these Rules apply to fast-track disputes, albeit with due observance of the following provisions of this article.
- 3 Leave must be obtained from the Chairman to handle the dispute as a fast-track dispute; if such leave is obtained, the Chairman shall decide whether the dispute will be assigned to one or to three arbitrators. Before making such decisions, the Chairman may give the respondent(s) the opportunity to inform him in this regard. The consultation between the parties as referred to in Article 3(2) of these Rules shall lapse.
- 4 In the disputes referred to in paragraph 1(c) of this article, each of the parties shall be authorised to require that one arbitrator be a lawyer-member of the Council of Arbitrators. In accordance with Article 3(5), the Arbitral Tribunal shall then always be comprised of three arbitrators and the Chairman's authority referred to in Article 14(3) to determine whether the dispute will be resolved by one or three arbitrators shall lapse. The party that wishes to exercise its authority as referred to in the first sentence of this paragraph must so notify the Chairman no later than on the day of the writ mentioned below or the notice of commencement of arbitration, as the case may be, either in the notice of commencement of arbitration or by means of written telecommunication.

Fast-track disputes

- 5 Disputes as referred to in paragraph (c) of this article shall always be considered fast-track disputes upon any request to that end, which request must be made in the request for arbitration; the Chairman's leave as referred to in paragraph 3 of this Article shall then be deemed to have been granted immediately.
- 6 For disputes as referred to in paragraph 1(a) and (c) of this Article, the request for arbitration, along with any exhibits, must be served on the other party by bailiff's writ no later than the date of receipt of the request for arbitration by the Arbitration Board. The bailiff's writ, having been served, must be submitted into the proceedings no later than at the oral hearing.
- 7 The Chairman shall determine the deposit and the date by which it must be made.
- 8 Written statements shall only be submitted if the Arbitral Tribunal deems this necessary.
- 9 The parties shall in any event be given the opportunity to set out the dispute in an oral statement.
- 10 The Arbitral Tribunal may immediately settle such disputes or – if it appears to the Arbitral Tribunal that such disputes do not qualify as fast-track disputes – refer them, in full or in part, to regular arbitration resolution, subject to the provisions in paragraph 11 of this Article.
- 11 The Arbitral Tribunal shall always immediately settle the disputes referred to in paragraph 1(c) of this Article, the only exception being where a claim is for compensation of damage, in which case the Arbitral Tribunal is authorised to refer the dispute, in full or in part, to regular arbitration resolution.
- 12 If possible and opportune, such in the sole discretion of the Arbitral Tribunal, the Arbitral Tribunal shall render an oral decision even on the day of the oral hearing or at a time to be determined by the Arbitral Tribunal, without prejudice to the provisions in Article 12 of these Rules.
- 13 In the event of examination and determination as referred to in paragraph 1(b) of this Article, the members of the Council of Arbitrators charged with the examination and determination shall be eligible for appointment as arbitrators in a dispute involving such examination and determination.

12 Joinder of parties and intervention

Article 15

- 1 At the request of a third party that has any interest in arbitration proceedings as referred to in these Rules, the Arbitral Tribunal may allow such party to join, or intervene in, such proceedings.
- 2 This request – properly described and explained in writing – must be submitted to the Arbitral Tribunal in a timely manner, with a copy being simultaneously sent by the requesting party to the parties.
- 3 A request for joinder or intervention in a fast-track dispute as referred to in Article 14(a) and (c) of these Rules may be regarded as timely if this request is received by the Arbitral Tribunal no later than by 3 p.m. on the working day before the day of the oral hearing of the fast-track dispute.
- 4 The request may only be handled by the Arbitral Tribunal if the requesting third party sufficiently demonstrates that an arbitration agreement, referring to the Arbitration Board, has been concluded between him and one of the parties in the relevant arbitration proceedings; the arbitration agreement shall then be considered “the same arbitration agreement between the parties and the third party” as referred to in Article 1045(1) of the Dutch Code of Civil Procedure.
- 5 The Arbitral Tribunal is authorised to invite the requesting party to pay a deposit, the amount and the payment deadline of which shall be determined by the Arbitral Tribunal.
- 6 The Arbitral Tribunal shall hear the parties in the arbitration proceedings and shall then render a decision on the request for joinder or intervention by the third party.
- 7 If the Arbitral Tribunal allows the requested joinder or intervention, the joinder or intervention shall be handled by the same Arbitral Tribunal as appointed in the arbitration proceedings referred to in paragraph 1 of this Article.
- 8 The oral hearing of the allowed joinder or intervention by the aforementioned third party shall take place on the same day as the day set for the oral hearing of the arbitration proceedings mentioned in paragraph 1 of this Article.
- 9 Articles 3 to 14, inclusive, of these Rules apply correspondingly to the handling of the joinder or intervention, unless the relevant provisions entail otherwise.

13 Impleader

Article 16

- 1 A party in arbitration proceedings may request the Arbitral Tribunal for leave to implead a third party, simultaneously sending a copy of such request to the other party; the request must state the reasons.
- 2 If the request is made by the respondent, it shall be inadmissible if the request is not made prior to all defences by the date set for submission of the statement of defence at the latest. If the request is made by the claimant, it shall be inadmissible if the request is not made by the date set for submission of the statement of reply at the latest.
- 3 Furthermore, the request may only be handled if the requesting party makes a reasoned argument that an arbitration agreement, referring to the Arbitration Board, was concluded between it and the third party to be impleaded; in that event said arbitration agreement shall be deemed “the same arbitration agreement between the parties and the third party” as referred to in Article 1045a(1) of the Dutch Code of Civil Procedure.
- 4 The Arbitration Tribunal shall hear the parties in respect of the request and then render a decision.
- 5 The provisions in Article 15(5) of these Rules apply correspondingly to the request.
- 6 If the Arbitral Tribunal allows the impleader, the Arbitral Tribunal may also handle the dispute in the impleader, subject to the provisions in paragraph 7 of this Article. The impleaded party shall become a party to the proceedings as a result of the allowance.
The Arbitral Tribunal shall invite the requesting party to submit a statement of claim in the impleader to the Arbitral Tribunal.
If the respondent wishes to lodge a counterclaim in the impleader, this may be done by including a counterclaim in the statement of defence at the latest, and the Arbitral Tribunal may then also handle the counterclaim; in that case, the respondent in the impleader shall also be deemed to be a “party requesting arbitration”, and Article 15 of these Rules shall apply accordingly.
- 7 If the arbitration agreement between the requesting party and the respondent in the impleader provides for authority as referred to in Article 3(3) of these Rules, upon request the Chairman shall be authorised to appoint a lawyer-member of the Council of Arbitrators as arbitrator as yet, to replace one of the arbitrators already appointed.
- 8 The oral hearings of the main action and of the impleader shall be consolidated.
- 9 Articles 3 to 14, inclusive, of these Rules apply correspondingly to the impleader, unless the relevant provisions require otherwise.

Consolidation of arbitration proceedings

Article 17

- 1 At the request of a party or of his own motion, the Chairman may order consolidated treatment of two or more arbitration proceedings commenced with the Arbitration Board based on the connection between these proceedings. Before doing so, he shall give the parties an opportunity to comment on the consolidated treatment.
- 2 A party in arbitration proceedings commenced with the Arbitration Board, the subject-matter of which proceedings is connected to proceedings before another arbitration institute in the Netherlands, may request that these proceedings be fully consolidated, provided that the other proceedings (hereinafter also: the proceedings to be consolidated) are conducted subject to the applicability of rules providing for the possibility of full consolidation of arbitration proceedings in a substantively corresponding manner.
The request for consolidation may already be made in the request for arbitration with which arbitration of the actual dispute is commenced with the Arbitration Board.
- 3 The parties in an arbitration commenced with the Arbitration Board expressly waive the possibility of making a request for consolidation of arbitration proceedings in accordance with the provisions of Article 1046 of the Dutch Code of Civil Procedure if the rules applicable to the proceedings to be consolidated also provide for the possibility of full consolidation of arbitration proceedings, unless in the case referred to in Article 18(5).
- 4 Requests seeking partial consolidation of arbitration proceedings commenced with the Arbitration Board with proceedings commenced with another arbitration institute in the Netherlands cannot be honoured.
- 5 Requests seeking consolidation of arbitration proceedings commenced with the Arbitration Board with proceedings commenced with another arbitration institute in the Netherlands shall be deemed not to have been made pending a motion of lack of jurisdiction of the arbitral tribunal in any of those proceedings.
- 6 Requests seeking consolidation of a fast-track dispute, as referred to in Article 14(1)(a) and (c) of these Rules, commenced with the Arbitration Board with proceedings before another arbitration institute in the Netherlands cannot be honoured.
- 7 The request must be made in writing to the Chairman of the Arbitration Board and must be accompanied by:
 - a. a statement of the address of the secretariat of the arbitration institute where the proceedings to be consolidated are pending;
 - b. if possible, a copy of the document with which the proceedings to be consolidated were commenced;
 - c. a copy of the arbitration rules that are applicable to the proceedings to be consolidated.

15 Consolidation of arbitration proceedings

Article 18

- 1 Before rendering a decision on the request, the Chairman shall give the party/parties in the proceedings commenced with the Arbitration Board the opportunity to submit comments on the request within a period of time at most fourteen days to be set by him. He shall send a copy of the request and the comments made to the chairman of the arbitration institute with which the proceedings to be consolidated were commenced. If that arbitration institute has no chairman, the copy shall be sent to the body with the authority to appoint an arbitral tribunal, hereinafter also referred to as the appointing authority.
- 2 The request for consolidation shall be jointly decided upon by the Chairman and the chairman/appointing authority of the arbitration institute with which the proceedings to be consolidated were commenced.
If the consolidation is ordered, they shall also determine the composition of the arbitral tribunal for the consolidated proceedings and – separately – which rules shall apply to the consolidated proceedings.
- 3 If the consolidation is ordered, they shall furthermore determine what is due to the arbitrators who as a result of the consolidation are relieved of their assignment for the work already performed by them. This shall also apply to the costs incurred by the secretariat of an arbitration institute, in so far as that secretariat no longer acts as the secretariat of the consolidated proceedings.
- 4 The chairmen referred to in the first paragraph or the Chairman and the appointing authority, respectively, may deny a request for consolidation in connection with the phase of the proceeding or proceedings for which consolidation is sought.
- 5 If the Chairman and the chairman/appointing authority of the arbitration institute before which the proceedings to be consolidated were commenced announce that no agreement has been reached on whether or not to consolidate the proceedings, or on the composition of the arbitral tribunal or the applicable rules, this gives rise to the possibility of making a request for the consolidation of arbitration proceedings in accordance with the provisions of Article 1046 of the Dutch Civil Code of Procedure.
- 6 If the request for consolidation concerns three or more proceedings to be consolidated with different arbitration institutes, then ‘appointing authority’ in the former paragraphs shall be read to mean ‘appointing authorities’.

Article 19

The arbitral tribunal for the consolidated proceedings shall always complete those proceedings as a whole. However, at all times it is entitled to refer a dispute, or any part thereof, either *ex officio* or at the request of any party, to the original arbitration institute, after which referral the arbitration rules applicable to that dispute prior to the consolidation shall once again apply.

Consolidation of arbitration proceedings/ Appeal

Article 20

An award made by the arbitral tribunal in consolidated proceedings shall only be open to appeal if and in so far as:

- a. all rules applicable to the original proceedings provide for the possibility of an arbitral appeal, or
- b. the parties involved in the consolidated proceedings have provided contractually for the possibility of an arbitral appeal, or do so as yet.

Article 21

The provisions in Articles 17 to 20, inclusive, apply correspondingly if a party in proceedings commenced with another arbitration institute in the Netherlands requests those proceedings to be consolidated with proceedings commenced with the Arbitration Board.

Appeal

Article 22

- 1 Each of the parties shall in principle be entitled to appeal against an award made by the Arbitration Board in the first instance.
- 2 An appeal against an arbitral award shall be ruled out if the award – had it been made by a regular court – would not have been eligible for appeal.
- 3 An appeal against an arbitral award must be lodged by filing a statement of appeal with the Secretariat within three months after the date of the relevant written award, unless the parties have expressly agreed to extend said period of time before it expires.
- 4 An appeal against an award in a fast-track dispute as referred to in Article 14(a) or (c) must be commenced by filing a statement of appeal with the Secretariat within one month after the date of the relevant written award, unless the parties have expressly agreed to extend said period of time before it expires. The Chairman shall decide on the fast-track handling of the appeal.
- 5 An appeal against an interim award and/or partial final award may only be lodged together with an appeal against the most recent final award, unless the Arbitral Tribunal – upon request or ex officio – has explicitly determined otherwise in the relevant award or if the parties have expressly agreed otherwise. The agreement between the parties to open appeal as yet shall not change the period for appeal referred to in paragraphs 3 and 4 of this article.
- 6 For the benefit of a party to the proceedings at first instance, not being an appellant, the period for appeal shall be extended by three months if that party wishes to lodge an appeal against another party to the proceedings at first instance, during which extended period an appeal may only be lodged on grounds that are connected to the possible success of the appeal lodged earlier.

7 In the event that a party to the proceedings at first instance, not being a cross-appellant, wishes to lodge an appeal as yet against another party to the proceedings at first instance further to a cross-appeal lodged, an extra period of three months after the cross-appeal has been lodged shall apply for the benefit of such party, during which extended period an appeal may only be lodged on grounds that are connected to the possible success of the cross-appeal lodged earlier.

8 Binding advice is not open to appeal.

Article 23

1 The appeal shall be handled by an Arbitral Tribunal comprised of three appeal arbitrators, or by five appeal arbitrators if both parties inform the Chairman before the point in time referred to in Article 3(2) to have so agreed and the Arbitral Tribunal at first instance was comprised of three members.

2 Expert-members and lawyer-members of the Council of Arbitrators are eligible for appointment as appeal arbitrators.

3 An arbitral Appeal Tribunal shall include at least one lawyer-member of the Council of Arbitrators.

4 An arbitrator who has participated in the handling of the dispute at first instance cannot be appointed as an appeal arbitrator.

5 The secretary who was assigned to the Arbitral Tribunal at first instance in accordance with Article 7 of these Rules may not be assigned as secretary to the arbitral Appeal Tribunal.

Article 24

1 In so far as Articles 22 and 23 of these Rules do not require otherwise, Articles 3 to 16, inclusive, of these Rules shall apply to the appeal, it being understood that the lodging of a counterclaim as referred to in Article 10(3) of these Rules, and the submission of a second statement as referred to in Article 10(2), shall not be allowed and that a decision in appeal by way of binding advice shall be ruled out.

2 The appellant's opposing party shall have the right to lodge a cross-appeal even after the periods mentioned in Article 22(3) and Article 22(4), respectively, but no later than simultaneously with its statement of defence in the main appeal; in that event, the party that first appealed shall be given the opportunity to submit a statement of defence in the cross-appeal.

3 The Appeal Arbitral Tribunal may allow an amendment, reduction or increase of a claim brought at first instance if the respondent has had the opportunity to comment on the same, in writing or orally, and if the arbitral Appeal Tribunal does not deem such to be unreasonable in respect of that party. In any event claims may

Appeal/Other provisions

be filed for interest, rent, damage or costs that have become due or have arisen after the decision at first instance.

- 4 A new defence may be presented, provided this is not contrary to the position adopted at first instance by the party presenting this new defence.

Other provisions

Article 25

The periods of time stated in these Rules are subject to the Dutch General Extensions of Time-limits Act.

Article 26

With regard to points relating to the adjudication of arbitration disputes that are not regulated in the Articles of Association and/or in these Rules, the Arbitral Tribunal shall decide.

Article 27

- 1 These Rules may be amended by the Arbitration Board's Board of Directors.
- 2 These Rules, and any amendment thereto, shall enter into force one month after they have been filed with the Amsterdam District Court.

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In force as of: 15 February 2016



Raad van Arbitrage voor de Bouw

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